IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPEAL NO.332 OF 2005

Amol alias Bandu Uttamlal Mehata
Resident of Sangli
(At present Kalmba Jail) ...Appellant.
V/s.
The State of Maharashtra
(At the instance of Kurlap
Police Station, Dist. Sangli) ...Respondent.

Mr.Sudatta Patil, Advocate for the Appellant.
Mrs.V.R.Bhosale, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 10th January, 2007.

ORAL JUDGMENT:

1. This appeal is directed against the judgment and order of conviction for the offences punishable under Sections 307 and 316 of the Indian Penal Code passed by the Ist Ad-hoc Additional Sessions Judge, Islampur in the Sessions Case No.20 of 2003. The accused/appellant was sentenced to undergo R.I. for 7 years and to pay a fine of Rs.5,000/- and in default to undergo further R.I. for two years on each count.

2. The prosecution story in brief is that the accused/appellant was working as a cable operator and was financially well settled. He was permanent resident of Sangli. During the relevant period, one Shahaji Mane also used to live at Sangli alongwith his wife,

P.W.9-Sharayu, daughter Shilpa and another daughter P.W.8-Deepali who is the victim of this incident. Shahaji Mane was working as a contractor but because he was not getting payment of the bills for a long time, he was facing a financial crunch and from time to time, he was required to take loans from the accused/appellant. The accused was friendly with P.W.8-Deepali for about 4-5 years prior to the incident. Because of this friendship, both the families came close to each other and Shahaji Mane and his wife used to treat the accused as their son and the accused also respected them like his parents. Due to the cordial relations, the accused advanced some amounts to Shahaji Mane in his difficulties, sometime prior to this incident. The accused was pressing Shahaji Mane for repayment of the amounts advanced by him and some amount was actually repaid according to the prosecution. It is alleged that still an amount of Rs.25,000/- was due from Shahaji Mane which he could not repay in spite of the repeated demands. Because of the financial crunch, Shahaji had disposed off his house and business at Sangli and shifted to Village Aitawade Budruk in Taluka: Islampur. P.W.8-Deepali was married to one Dhananjay Patil about one and half year prior to the incident of this case and she was living with her husband. According to the prosecution on 10-12-2002, the accused contacted

Deepali, who was then staying with her parents at Aitawade, on phone and requested her to come to Islampur immediately. He told her that some important matter was to be discussed. At that time, Deepali was in advanced stage of pregnancy and was due to deliver shortly. In spite of such condition, she went to Islampur. There the accused met her. The accused was in depressed mood. He took her to a restaurant and consumed liquor. She tried to go away but he also followed her and finally both of them reached Village Aitawade Budruk. The accused allegedly asked Deepali to admit that she was having some illicit affair which she denied. This resulted in exchange of hot words. The accused allegedly purchased a knife on that day and threatened to kill her with a knife and also to commit suicide by consuming a poison which he was having in his hands. In such circumstances, the accused and P.W.8-Deepali reached near the house of one Shamrao and dispensary of Dr.Uttamrao Bhure. Apprehending danger to life, she tried to take shelter behind P.W.7-Yogita daughter of Dr.Uttam Bhure but when the accused tried to assault her with knife she rushed into the house of Shamrao where his daughter P.W.6-Pournima Mane was present with her new born child and aunt. Accused allegedly stabbed Deepali repeatedly with the knife in his hands due to which she suffered severe bleeding injuries on the vital

parts of the body, particularly on abdomen. After the assault, the accused ran away leaving blade of the knife at the spot. Family of Deepali was known to Dr.Uttam Bhure. She immediately rushed to the clinic of Dr.Uttam Bhure. Dr.Uttam Bhure also came there after getting the message of incident. Thereafter taking into consideration her condition, she was referred to the C.P.R.Hospital at Kolhapur and operation was performed on her and a female child was born. However, due to the injuries suffered by Deepali and trauma of the same, child also died within a few hours.

3. Mother of Deepali namely, P.W.9-Sharayu and her cousin Dhanaji had also come to Deepali and they had taken her to the hospital. Her mother, Sharayu lodged a report of this incident. On the basis of her report, offence was registered and statements of witnesses were recorded. Blood stained clothes of Deepali, her broken bangles as well as blood stained clothes of the accused were seized. Blade of knife, broken bangles and some other articles were seized from the house of Shamrao where the incident had occurred. Plastic handle of the knife was recovered on the basis of information given by the accused. After investigation, charge-sheet was filed and the accused was put to the trial for the offences under Sections 307 and 316 of the Indian Penal

Code.

4. The accused pleaded not guilty. According to him he had advanced huge amounts to the father of Deepali in his needs. Shortly before the date of this incident, wife of the accused had suffered burn injuries in an accident in their house and she had suffered 46% burn burns. She was required to be admitted and treated in different hospitals. For her treatment, huge amount was needed. Therefore, he repeatedly requested Shahaji to make repayment of the amount as it was urgently needed for the treatment of his wife but there was no response. He also tried through Dhananjay Patil, husband of Deepali but in vain. According to him, on 10-12-2002 he tried to contact Shahaji Mane on phone to request him to come to Islampur to understand his difficulties and make payment. But Shahaji avoided to speak with him on phone and instead of coming to Islampur personally, he sent his daughter, Deepali there. According to him, he was in a depressed mood. Short of admitting that he had assaulted Deepali with knife, he admitted most of the contentions of the prosecution about family relationship, friendship and advancement of loans, etc.

5. On behalf of the prosecution in all 10

witnesses were examined. The accused also examined 5 witnesses in his defence mainly to prove the circumstances in which he was pressed during the relevant period. After hearing the evidence of both the parties, the learned trial Court convicted and sentenced the accused as stated above.

6. Heard the learned counsel for the parties. They have taken me through the evidence and the circumstances of the case extensively.

7. Admittedly for about 4-5 years prior to the incident, there was friendship between the accused and P.W.8-Deepali. Because of their friendship, both the families came closer to each other. The accused was already married. Parents of Deepali used to treat him as their son and he also treated them as parents. According to Deepali, the accused used to treat her as a sister. Admittedly, in the business as a contractor Shahaji, father of Deepali was facing financial crunch and difficulties. And, therefore, from time to time, the accused had advanced loans to him. It is not necessary to go into the details of those advances. According to the accused very huge amount was given which was not repaid while according to P.W.9-Deepali amount of Rs.1,25,000/- was repaid to him. Not only

this he was also given 7 tolas of gold ornaments in repayment of loans. According to her, the only amount of Rs.25,000/- was due to be repaid. For decision of the present matter, it is not necessary to come to a conclusion as to how much amount was due to be repaid. It is material to note that Shahaji was not examined as a witness by the prosecution. It is also admitted fact that on 10-12-2002 at about 2.00 p.m. the accused telephonically contacted parents of Deepali. According to him, her father avoided to speak to him and Deepali came on phone. While according to Deepali, the accused had requested her to come to Islampur. Anyway, the fact remains that after the said telephonic talk, Deepali went to Islampur and reached there at about 2.00 p.m. After that they were together for more than four hours at Islampur and at Aitawade Budruk. Taking into consideration the circumstances which have come in the cross-examination of P.W.8 and P.W.9 as also in the evidence of defence witnesses, there is a reason to believe that the accused must not have been interested in calling Deepali to Islampur as he was badly in need of money. He must have been interested in calling her father to Islampur to understand his difficulties and to repay his dues.

8. Evidence of P.W.8-Deepali reveals that after

reaching Islampur, she contacted the accused on his mobile at about 2.00 p.m. and thereafter, the accused also came there. As she was in a hurry to go back, they decided to sit in lodge near Mankeshwar theatre. According to her, when they were sitting there, the accused left the lodge saying that he would come shortly and he infact, came back after 15 minutes with two liquor bottles. There he called soda and consumed one and half bottle of the liquor. At that time, the accused also showed one bottle of poison and knife to her. According to her, he told her that he would stab her and consume poison and thereby defamed her. According to her, he was asking her to admit the extra marital relationships which she denied. Taking into consideration, family relationship and friendship between the two, it is difficult to believe that the accused might have made such a request to her. After this, she went to bus stand and finally she reached Ladegaon phata which appears to be a part of Aitawade Budruk.

9. As per her evidence, when they went near the dispensary of Dr.Uttam Bhure, the accused threatened to stab her, therefore, she called P.W.7-Yogita, daughter of Dr.Uttam Bhure and took her as a shield to protect herself. Yogita was aged about 16 years at that time.

When the accused tried to assault her with a knife, Deepali rushed into the house of one Shamrao where P.W.6-Pournima alongwith her newly born child was lying. Her aunt was also present in the house. As the accused also rushed into the house after Deepali, ladies inside the house got frightened and they requested them to go away. However, in spite of this, the accused pushed Deepali on a sofa and repeatedly stabbed her with a knife causing number of bleeding injuries on different vital parts of the body including abdomen. After that he ran away. At the spot of the incident, blade of the knife and broken bangles of Deepali fell down. There were also blood stains on the floor of the house. After the incident, she somehow reached dispensary of Dr.Uttam Bhure, who was not present. He was also given a message that daughter of Shahaji Mane was seriously injured, therefore, he came back to the dispensary within no time. Evidence on record reveals that her mother Sharayu and cousin, Dhananjay also reached there within a short period of time after getting the message of this incident and thereafter, she was taken to the C.P.R.Hospital at Kolhapur.

10. Evidence of Deepali about actual incident finds corroboration from the evidence of P.W.7-Yogita and P.W.6-Pournima. Evidence of Dr.Uttam Bhure and her

mother, P.W.9-Sharayu shows that she had told them that she was assaulted and stabbed by Bandu. The accused is also known as Bandu. The conduct of Deepali in revealing the name of the assailant immediately after the incident also provides corroboration to her testimony. Not only this, Yogita and Pournima identified the accused as assailant during their evidence before the Court. Though these witnesses were cross-examined at length, nothing has come on record to impeach the credibility and reliability of any of these witnesses. Therefore, there should not be any difficulty in accepting the prosecution case that the accused had assaulted Deepali with knife and caused injuries to her.

11. There is also material circumstantial evidence against the accused. As per the evidence, she was taken to C.P.R.Hospital, Kolhapur. Exhibit-11 is the medical certificate of Deepali which reveals that she had suffered 6 injuries out of which two were stab and penetrating wounds over the left lower chest and left hypochadrim. Besides, she had suffered incised wounds on epigastric region, back, left side knee and over the right side of the abdomen. She was admitted in the hospital on the same date, i.e. on 10-12-2002 and was discharged on 30-12-2002. For the said injuries, she

was operated upon and during the operation, female child was born. Exhibit-12 is the death certificate of female child of Deepali. As per the certificate, child was born and admitted in the hospital at about 12.15 a.m. on 11-12-2002 and had died on the same date at 6.20 a.m. Cause of death was birth asphyxia with aspiration pneumonia due to blood in amniotic fluid due to stab injury to mother and borderline prematurity.

12. Before concluding, it will be useful to look to the other circumstantial evidence briefly. As per the evidence of P.W.2-Firoj, the accused had purchased a knife for Rs.20/- from him on the date of incident. Blade of the knife-Article 4, and plastic handle-Article 23 were shown to him. He deposed that they are the parts of the same knife which was purchased from him. From the evidence of P.W.4-Rambhau and P.W.10-P.I.-Rajendra Patil, it is revealed that plastic handle of the knife-Article 23 was recovered on the basis of information given by him as per the Memo-Exhibit 22 and Seizure Panchanama-Exhibit 23. Blade of the knife, Article 4 was seized from the spot alongwith other articles under Spot Panchanama, Exhibit 9. The clothes of the accused were produced by his father under Panchanama Exhibit 26. This seizure is

proved by P.W.5-Vasant Rajaram Patil. These clothes are marked as Article 24 and 25.

13. As per the evidence, property seized in this case was referred to C.A. and Exhibit Nos.37,38 and 39 are the C.A.Reports. Exhibit 38 reveals that blood group of Deepali is ’B’ group and as per the Exhibit 39, blood group of the accused is also of ’B’. As per the C.A.Report-Exhibit 37 blood of ’B’ group was found on earth and on the knife blade recovered from the spot. Similarly, blood of ’B’ group was found on the clothes of Deepali as well as on the pant and shirt of the accused. The learned trial Court rightly noted that the accused had not suffered any injury and, therefore, blood stains of ’B’ group on his own clothes could not be his own blood. In view of this, there is a reason to believe that on all his clothes, blood of Deepali was found.

14. In the given circumstances, there is no doubt that though Deepali was in the advanced stage of pregnancy and was likely to deliver shortly, still it was not her natural delivery and the female child was prematurely born by operation which was necessary due to stab wounds. Because of the circumstances child also died. As the injuries to the child were caused when it

was in the womb, it could not be treated as culpable homicide or murder but an offence of causing death of quick unborn child by an act amounting to culpable homicide. If it would have been born before causing death, it would be the offence of culpable homicide as defined in Section 299 of the Indian Penal Code but as due to the injuries caused to its mother and because of its trauma, child had died, the offence under Section 316 is committed. Circumstances in which the accused assaulted and stabbed Deepali clearly reveals that either he had intention to kill her or he had knowledge that she would die because of the injuries. Fortunately, she survived. Therefore, I find that offence under Section 307 of the Indian Penal Code is committed.

15. Taking into consideration all the circumstances, I find that prosecution has proved the charges under Sections 307 and 316 against the accused and as such, the order of conviction has to be maintained.

16. During the cross-examination of prosecution witnesses and in the evidence of defence witnesses as also the written statement of the accused under Section 313 of the Cr.P.C., he had explained the circumstances

under which he was put at the relevant time and I find no reason to disbelieve the same. As per his plea which is corroborated by the defence witnesses, his wife had suffered burn injuries accidentally at the house, and, therefore, she was required to be admitted in different hospitals. Huge amount was required to be spent for her treatment. However, during that period the accused himself was facing financial crunch and was not in a position to meet all the expenses. Therefore, he had repeatedly requested Shahaji Mane to repay the loan amount to him but there was no response. It appears that on the day of incident inspite of the accused's request on telephone, neither Shahaji himself turned up nor he made any arrangement to make payment but he sent his daughter Deepali to the accused. Due to this, the accused was further depressed. He was repeatedly requesting Deepali to arrange for the payment of atleast Rs.25,000/- immediately which she could not due to the financial difficulties faced by her father also. From her evidence itself, it is clear that the accused was so much depressed and that he had brought two bottles of liquor and quickly consumed 1 and half bottle and thereafter, the accused showed knife and bottle containing poison and stated that he would stab her and also consume the poison. This shows that the circumstances in which he was put and his mental

condition because of the financial crunch. There is a reason to believe that because of these circumstances, he had lost control of his mind and in these circumstances, he assaulted and stabbed Deepali repeatedly. In fact, admittedly, they were good friends, there was never any enmity nor there was any disputes between the two but at the same time, it must be remembered that Deepali had not offered any provocation to him. Had Deepali offered any grave and sudden provocation resulting in the loss of control of mind, the case would have fallen under Section 308 instead of 307. However, there was no such grave and sudden provocation from Deepali, therefore, the accused can not take that benefit. But certainly these circumstances have to be taken into consideration while awarding sentence. The learned Trial Court awarded the R.I. for 7 years and a fine of Rs.5,000/- and in default further R.I. of 2 years on each count. It means that if he is unable to pay fine, he will have to remain in jail for 11 years. Taking into consideration the circumstances in which the incident occurred, the sentence appears to be very harsh and severe and, therefore, the sentence awarded by the Trial Court can not be supported. In my considered opinion, it is necessary for this Court to interfere. Record reveals that the accused was in custody from 13-12-2002 to

23-12-2002 and again from 13-9-2003 he continues to be in custody. Thus, he has undergone a sentence of more than 3 years and 4 months.

17. Taking into consideration all the circumstances noted above, appeal is partly allowed. Conviction of the accused for the offences punishable under Sections 307 and 316 is hereby maintained. However, the sentences awarded by the Trial Court stand modified as under:

1. The accused is sentenced to undergo R.I. for 3 and half years and to pay a fine of Rs.5,000/- and in default to pay fine further imprisonment for six months on each count. Period during which he was in custody shall be set off against the sentence awarded under Section 428 of the Cr.P.C.

(J.H.Bhatia,J.)

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Amol alias Bandu Uttamlal Mehata
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Mr.Sudatta Patil for the Appellant.
Mrs.V.R.Bhosale, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 10th January, 2007.

OPERATIVE ORDER

. For the reasons recorded separately, appeal is partly allowed. Conviction of the accused for the offences punishable under Sections 307 and 316 is hereby maintained. However, the sentences awarded by the Trial Court stand modified as under:

2. The accused is sentenced to undergo R.I. for 3 and half years and to pay a fine of Rs.5,000/- and in default to pay fine further imprisonment for six months on each count. Period during which he was in custody shall be set off against the sentence awarded under Section 428 of the Cr.P.C.

(J.H.BHATIA, J.)